

Remarks / Arguments

Claims 1 – 5 and 7 – 17 are pending in this application. Claim 6 was canceled in a previous Amendment.

1. Claim Rejections - 35 U.S.C. §103

a. Shayan in view of Frank et al.

Claims 1 – 3, 5, 7, and 11 – 17 were rejected under 35 U.S.C. §103(a) as being unpatentable over Shayan in view of Frank et al.

The Examiner states that it would have been obvious to one of ordinary skill in the art “to have provided Shayan’s device with a removable hood as taught by Frank.” (Office Action, page 2, paragraph 3.) However, even if there were a teaching, suggestion or motivation to combine Shayan and Frank et al., the resulting combination would not have produced the invention of Claim 1, nor would it have suggested the invention of Claim 1.

Neither Shayan nor Frank et al., alone or in combination, teaches or suggests a “vapor-concentrating lid” comprising “a central depressed area of a size and shape whereby during use a user’s nasal area is loosely engaged by the central depressed area,” as recited in Claim 1. As the Examiner correctly acknowledges, Shayan does not disclose a lid comprising a central depressed area for loosely engaging a user’s nasal area. (Office Action, page 2, paragraph 3.)

Furthermore, Shayan does not disclose a *vapor-concentrating* lid. The lid of the present invention is vapor-concentrating because it concentrates the vapor “into an area smaller than the opening of the reservoir.” (Published application, paragraph [0024], lines 3-4.) In contrast, Shayan does not disclose that the top 12 of the Shayan device is a vapor-concentrating lid. Instead, it appears that the vapor in the Shayan device is concentrated in the venturi tube receptacle 40 (*see Figure 3*), which receives the vapor that is produced in the device (Column 2, lines 57-62). There is no indication that the vapor is concentrated by the top 12 into an area smaller than the opening of the venturi tube receptacle. Therefore, Shayan does not teach or suggest the use of a vapor-concentrating lid.

Frank et al. also fails to disclose a vapor-concentrating lid. Element 14 of the Frank et al. vaporizing device is a hood section. (Column 5, line 11.) The examiner refers to the hood section 14 as a lid. (Office Action, page 2, paragraph 3.) Even if the hood section is considered to be a lid, this hood section is not vapor-concentrating. The hood section controls the direction of steam flow (Column 5, lines 11-12), but it does not *concentrate* the steam. Instead, the steam is concentrated in the steam generating and control section 12, prior to entering the hood section 14. (*See* Figures 1 and 2).

In fact, the hood section of Frank et al. is actually vapor-dispersing, rather than vapor-concentrating. The openings 102, through which steam passes from the steam generating and control section 12 to the hood section 14 (*see* Figure 3), are much smaller than the opening in the hood through which a user may inhale steam (*see* Figure 1). Therefore, after passing through the openings 102, the steam is dispersed in the hood section 14, rather than concentrated. Furthermore, the hood section 14 contains passages 147 (Column 8, line 2), which may “function to permit the escape of steam and air” (Column 8, lines 10-15) away from the user’s face. These passages of the hood section further ensure that the steam will be dispersed after passing through the openings 102. Therefore, Frank et al. does not teach or suggest the use of a vapor-concentrating lid.

In sum, neither Shayan nor Frank et al., alone or in combination, teaches or suggests a vapor-concentrating lid comprising a central depressed area of a size and shape whereby during use a user’s nasal area is loosely engaged by the central depressed area. Neither Shayan nor Frank et al., alone or in combination, even teaches or suggests a vapor-concentrating lid. Moreover, the features of the Shayan and Frank et al. devices that are vapor-concentrating, i.e. the “venturi tube receptacle” of Shayan and the “steam generating and control section” of Frank et al., do not comprise a central depressed area of a size and shape whereby during use a user’s nasal area is loosely engaged by the central depressed area. Consequently, the invention of Claim 1 is not obvious in light of Shayan and Frank et al. *See* M.P.E.P. §§ 2143, 2143.03; *see also In re Royka*, 490 F.2d 981, 984, 180 U.S.P.Q. 580, 583 (C.C.P.A. 1974).

Claims 2, 3, 5, and 7 are dependent on Claim 1, and therefore are also not obvious in light of Shayan and Frank et al.

Claims 11 and 13 are not obvious in light of Shayan and Frank et al., for the same reasons that Claim 1 is not obvious. Consequently, claim 12 is also not obvious in light of Shayan and Frank et al., because Claim 12 is dependent on Claim 11.

The Examiner states that, with regard to Claims 14 – 17, the “modified device disclosed by Shayan and Frank has all of the structural limitations needed to perform the recited method steps and is fully capably of doing so. It would have been obvious to one of ordinary skill in the art at the time the invention was made, upon seeing the modified device, to perform the recited method steps of the instant claim.” (Office Action, page 3, paragraph 4).

The Applicant respectfully asserts that a device made from the combination of Shayan and Frank et al. would not have all of the features needed to perform the recited method steps. Claims 14 -17 each include the method step of “connecting a vapor-concentrating lid comprising a central depressed area of a size and shape whereby during use a user’s nasal area is loosely engaged by the central depressed area to the reservoir.” As discussed above with regard to Claim 1, a device made from the combination of Shayan and Frank et al. would not include a vapor-concentrating lid comprising a central depressed area of a size and shape whereby during use a user’s nasal area is loosely engaged by the central depressed area. Therefore, a device made from the combination of Shayan and Frank et al. would not include all of the features necessary to perform the recited method steps of Claims 14 – 17. Consequently, it would not have been obvious to one of ordinary skill in the art, upon seeing a device made from the combination of Shayan and Frank et al., to perform the recited method steps.

For the foregoing reasons, Claims 1 – 3, 5, 7, and 11 – 17 are not obvious in light of Shayan and Frank et al. Reconsideration of the rejection of these claims is respectfully requested.

b. Shayan in view of Frank et al. and Ninkov

Claim 8 was rejected under 35 U.S.C. §103(a) as being unpatentable over Shayan and Frank et al. and further in view of Ninkov.

As discussed above under section 1.a., Claim 1 is not obvious in light of Shayan and Frank et al. Because Claim 8 is dependent on Claim 1, Claim 8 is also not obvious in light of Shayan and Frank et al. Ninkov does not compensate for the deficiencies in Shayan and Frank et al. Response dated July 11, 2007

al. discussed above, because Ninkov fails to teach or suggest the structure of any device related to the inhalation of vapors.

Therefore, Claim 8 is not obvious in light of Shayan, Frank et al., and Ninkov. Reconsideration of the rejection of Claim 8 is respectfully requested.

c. Shayan in view of Frank et al. and Silten

Claims 9 and 10 were rejected under 35 U.S.C. §103(a) as being unpatentable over Shayan and Frank et al. and further in view of Silten.

As discussed above under section 1.a., Claim 1 is not obvious in light of Shayan and Frank et al. Because Claims 9 and 10 are dependent on Claim 1, Claims 9 and 10 are also not obvious in light of Shayan and Frank et al. Silten does not compensate for the deficiencies in Shayan and Frank et al. discussed above, as Silten fails to teach or suggest a vapor-concentrating lid comprising a central depressed area of a size and shape whereby during use a user's nasal area is loosely engaged by the central depressed area.

Therefore, Claims 9 and 10 are not obvious in light of Shayan, Frank et al., and Silten. Reconsideration of the rejection of Claims 9 and 10 is respectfully requested.

2. Request for Reconsideration and Allowance

Based upon the above Remarks, Claims 1 – 5 and 7 – 17 are believed to be in proper form for allowance, and patentable over the prior art made of record. Applicant respectfully requests reconsideration of the claim rejections, and requests that a timely Notice of Allowance be issued in this case.

Please direct any questions or comments regarding this application to Audrey J. Babcock at (612) 321-2265.

Respectfully submitted,
CNS, Inc., by its attorneys,

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